
**State Government Operations &
Accountability Committee**

HB 1752

Brief Description: Improving procedures for ballot processing and canvassing.

Sponsors: Representatives Green, Nixon, Shabro, Haigh, Upthegrove, Moeller, Campbell, Simpson, Sells, Schual-Berke and Linville; by request of Secretary of State.

Brief Summary of Bill

- Prescribes standards or procedures for distinguishing provisional ballots, processing absentee ballots, counting write-in ballots, manually inspecting ballots, and canvassing returns.

Hearing Date: 2/23/05

Staff: Marsha Reilly (786-7135).

Background:

The basic structure for conducting elections is prescribed by law. As the state's chief election officer, the Secretary of State (Secretary) is authorized to promulgate rules necessary to conduct an election, including procedures to ensure consistency among the counties in preparing ballots, operating vote tallying systems, and canvassing of primaries and elections.

The closeness of the recent gubernatorial election resulted in two recounts and two court battles in front of the state supreme court. The margin of victory was 129 votes out of over 2.8 million votes cast. An election contest was filed in superior court and is pending as of this date. Due to the closeness of the race and the related litigation, much attention has been focused on state election laws.

Summary of Bill:

The bill adds new provisions and amends statutes relating to conducting an election.

Provisional Ballots. Standards for the design of provisional ballots require that the ballots be distinguishable from other ballots and incapable of being tabulated by poll site counting devices.

Processing of Returns. The process of opening and processing return envelopes for absentee ballots may begin upon receipt.

Signatures. At least three of the following criteria must be met when matching signatures on an absentee or provisional ballot envelope with the signatures on the registration file:

- capital letters match;
- letters tail off alike;
- letter spacing is the same;
- space between the signature and the line is the same;
- beginning and ending of the signature and the slant are consistent;
- unique letters match; and
- overall appearances match.

In making a determination on signature matches, the board may consider the age of the voter and the date of the signature on the registration file.

If a voter neglects to sign the envelope, the auditor must notify the voter, by telephone or first class mail, of the actions the voter must take in order for the ballot to be counted. The voter may sign the original envelope in person or sign and return a copy of the envelope provided by the county auditor no later than the day before election certification.

These same procedures apply in the event a voter's signature does not match that in the registration file. However, the ballot may be counted when the voter's name has changed but the handwriting is the same. In this instance, the auditor must send the voter a change of name form. If the signature is not the same because the voter used initials or a common nickname, the ballot may be counted if the surname and handwriting are the same.

A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

Records, including dates of all actions, must be kept of all transactions involved in correcting a signature discrepancy. The records are public once the election is certified by the county canvassing board.

Counting Write-in Votes. A write-in vote for a candidate whose name appears on the ballot is a valid vote, even if the voter also marked a vote for that candidate corresponding to the printed name. These "overvotes" do not need to be counted unless 1) the difference between the number of votes cast for the top two vote getters is less than the sum of the total number of write-in votes cast for the office plus the overvotes and undervotes recorded; or 2) a manual recount is conducted.

A write-in vote for a candidate whose name does not appear on the ballot does not need to be counted unless the total number of write-in votes and undervotes recorded is greater than the number of votes cast for the candidate receiving the most votes in that election.

Counting write-in votes in an election for a statewide office or any office whose district encompasses more than one county are counted at the discretion of the county auditor, unless the county auditor is notified by the Secretary or another county auditor that the write-in votes may affect the results of the election. The abstract of votes must be modified to reflect the tabulation and certified by the canvassing board. Tabulation of write-in votes may be performed simultaneously with a recount.

Inspection of Ballots. Every poll site ballot not tabulated at the poll site, each mail ballot, and each provisional ballot must be manually inspected on both sides of the ballot and for each voter response on the ballot. The county auditor may refer ballots that are damaged, unreadable, or contain marks that do not correspond to voting instructions to the canvassing board or, if authorized by the board, may duplicate the ballot. A ballot may be duplicated *only* if the intent of the voter is clear and it is determined that the ballot might not be properly counted by the electronic voting equipment.

If a ballot is duplicated, it must be done by teams of two or more people working together. The county auditor must keep detailed notes of actions taken, including a log of ballots duplicated containing the control number of the original and duplicated ballots, the initials of at least two people who participated in the duplication, and the total number of ballots duplicated.

All ballots must be sealed in secure storage at all times except during duplication, inspection by the board, or tabulation.

Ballot Disputes. Whenever precinct election officers or counting center personnel have a dispute over a ballot that cannot be resolved, they are required to prepare and sign a detailed record of the facts and submit it, along with the disputed ballots, to the board. Only the board may reject a ballot or vote as invalid and this authority may not be delegated.

Returns. County auditors are required to electronically transmit cumulative returns for state offices, judicial offices, and U.S. Senate and congressional offices to the Secretary immediately. The period of time allowed for the canvassing board to complete the canvass and certify the results of a general election is changed from the 15th to the 20th day after the election. The canvassing board is authorized to re-canvass the ballots or voting devices when it finds a discrepancy or inconsistency in the returns due to an error by the county auditor or his or her staff.

No later than the 30th day after the general election, the Secretary must canvass and certify the returns for candidates for state office, U.S. Senate and congressional office, and candidates whose districts encompass two or more counties. A copy of the certification must be sent to the governor, the President of the Senate, and the Speaker of the House of Representatives.

Recounts. The provision that a recount occur less than three business days from the time an application is filed, a recount is ordered by the Secretary, or a recount is mandated by law is removed. Rather, the canvassing board is authorized to determine the date of the recount. The Secretary may require that amended abstracts be certified by each canvassing board on the same date.

An elector who files an affidavit regarding the issuance of a certificate of election following a recount must do so within 10 days of the official certification of the amended abstract.

Appropriation: None.

Fiscal Note: Requested on February 15, 2005.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.